*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.13954 of 2004

%20.8.2004

£ Chidurala Rani, W/o. Ravinder Reddy,

H.No.2-10-141, Waddepally, Hanumakonda, Warangal District

..... PETITIONER

AND

$ 1 The Commissioner, Warangal Municipal Corporation, Warangal.
2 Gutam Raji Reddy S/o. Malla Reddy
Bhavanipuram, Vijayawada. H.No. 2-10-11/1, Waddepally,
Hanumakonda, Warangal District.
3 Gutam Krishna Reddy, S/o. Ram Reddy
R/o. H.No. 2-8-175, Waddepally, Warangal District.
4 Gutam Krishna Reddy S/o. Adi Reddy,
R/o. 2-10-13, Waddepally,
Hanumakonda, Warangal District.
5 Gutam Malla Reddy S/o. Surayya
Waddepally, Hanumakonda,Waranal District.
6 Gutam Adi. Reddy S/o. Malla Reddy
R/o. H.No.2-10-11, Waddepally, Hanumakonda, Warangal District.

.....RESPONDENTS

! For the petitioner …Mr. Y. Rama Rao

^For the Respondent No.1 …Mr. K. Venugopal Reddy, S.C.

<Gist:

>Head Notes:

? Cases Referred

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13954 of 2004

Between:

Chidurala Rani W/o. Ravinder Reddy
H.No. 2-10-141, Waddepally, Hanumakonda, Warangal District.

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AND

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R/o. H.No.2-10-11, Waddepally, Hanumakonda, Warangal District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more specially one in the nature of Writ of Mandamus by declaring the impugned proceedings issued by the 1st respondent No. UC-4/TPS/III/04-05, dt. 2.8.2004 as illegal, arbitrary, void abinitio and violation of Articles 14 and 21 of the constitution of India besides violative of due proceedures of law and principles of natural justice.

Counsel for the Petitioner:MR.Y.RAMA RAO

Counsel for the Respondent No.1 : MR.K.VENUGOPAL REDDY, SC

The Court made the following :

ORDER:

The petitioner claims to be the owner and possessor of property in Warangal Town. She allegedly got the property by reason of registered gift deed executed by one B.Sampath Reddy. According to her, she constructed a room and Warangal Municipal Corporation (hereafter called, the Corporation) allotted H.No.2-10-143/1. So as to construct a bigger house, she made an application to the Corporation

seeking permission for construction under the provisions of Hyderabad Municipal Corporation Act, 1955 (HMC Act), which are made applicable Warangal Municipal Corporation by reason of Section 6 of the A.P. Municipal Corporations Act, 1994. The Corporation accorded permission by proceedings dt.27.5.2004 and the petitioner alleges that she has completed the structural construction including roof and staircase.

The other aspect of the petitioner's case is that respondents 2 to 6 are making attempts to grab the house plot of the petitioner and therefore the petitioner filed a suit being O.S.No.933 of 2004 on the file of the Court of II Additional Junior Civil Judge, Warangal, against them. She also obtained ad interim temporary injunction from the said Court on 30.6.2004 restraining respondents 2 to 6 from interfering with the peaceful possession and enjoyment of the petitioner. She alleges that she also filed a suit against Corporation for injunction, and also gave a complaint to P.S.Subedari, which is registered as F.I.R.No.378 of 2004 against respondents 2 to 6 under Sections 290, 323 and 506 of Indian Penal Code (IPC). The respondents 2 to 6 filed a writ petition before this Court being W.P.No.12978 of 2004. This Court disposed of the said Writ Petition on 26.7.2004 directing the Corporation to consider the representation of respondents 2 to 6. Respondents 2 to 6 were also given liberty to approach the Civil Court if they are aggrieved by any decision of the Corporation. Thereafter, after considering the representation of respondents 2 to 6, the Corporation, first respondent herein issued impugned order cancelling municipal permission granted to petitioner on 27.5.2004 and petitioner was also directed to remove the construction made by her. The order of the Corporation dt.2.8.2004 is challenged in the Writ Petition as illegal and violative of principles of natural justice.

Learned counsel for the petitioner, Sri Y.Rama Rao submits that the impugned order is one passed under Section 636 of the HMC Act and as the same is not preceded by any notice, it should be declared as void. Secondly, he would urge that at the time of making application for building permission petitioner produced all the relevant documents based on which the permission was granted. Therefore, it was improper for first respondent to come to the conclusion that the petitioner made misrepresentation at the time of obtaining municipal permission. Lastly, he contends that the impugned order is contrary to the orders of this Court in Writ Petition No.12978 of 2004 dt.26.7.2004.

Learned Standing Counsel for the Corporation, Sri K.Venugopal Reddy refutes all the contentions of the learned counsel for the petitioner and submits that the petitioner has played fraud and misrepresentation in obtaining building permission and therefore the action was taken under Section 450 of the HMC Act.

The impugned order does not suffer from any infirmity or illegality and therefore the Writ Petition is liable to be dismissed *in limini* for the following reasons. A reading of the impugned order would show that respondents 2 to 6 herein gave a complaint to the Commissioner stating that the land, in respect of which permission was sought by the petitioner, belongs to them and that the petitioner obtained land from her donor without partition of land belonging to Sri Gutam Malla Reddy, that the petitioner was issued notice dt.7.7.2004 requesting her presence in the Corporation

office to sort out the issue, that she appeared on 9.7.2004 before the Town Planning Officer (OG) and failed to submit link document of the donor, that only she submitted adangal/pahani issued by Mandal Revenue Officer, Hanmakonda, and that she also failed to file any documents to prove as to how her donor got the land from pattadar, late Gutam Malla Reddy. The impugned order also shows that the registered documents produced by her do not even contain survey number or adangal copy, but only House No.2-10-143/1 was mentioned and that the permission granted for construction of said house was cancelled by the Corporation by proceedings dt.13.7.2004. It was also mentioned that when the permission for construction of House No.2-10-143/B was itself cancelled, on that basis, the petitioner could not have obtained approval of the plan by the Corporation. Further, the construction made by her under said permission was treated as unauthorized and she was advised to remove construction already made within five days.

Before passing the impugned order, a notice was issued. The same is not specifically denied. In the affidavit accompanying the Writ Petition it is not denied that she failed produce any link document of title under which her donor got the property. The other facts in the impugned order are also not denied. In such a situation, Section 450 of HMC Act is attracted, which reads as under:

450. Power of Commissioner to cancel permission on the ground of material misrepresentation by applicant:- If at anytime after permission to proceed with any building or work has been given, the Commissioner is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under Section 428 or 433 or if the further information if any, furnished, he may cancel such permission and any work done thereunder shall be deemed to have been done without his permission.

The above provision empowers the Commissioner (i) to cancel permission granted when the Commissioner is satisfied that the permission is granted in consequence of material misrepresentation or fraudulent statement contained in the notice given or information furnished under Sections 428 or 433; and (ii) to treat the work done under the permission as having been done without such permission. Be it noted that under Section 428 every person who intends to erect a building shall have to give a notice to the Commissioner of his said intention in the prescribed form and obtain permission before starting construction. Be it also noted that under Section 429(1)(aa) every person has to furnish a copy of the title deed of the land duly attested by a Gazetted Officer of the Government together with urban land ceiling clearance certificate. The law requires a person to produce title deed not as a mere formality, but to enable the Commissioner or competent authority to verify the same. This is intended to avoid litigation and future complications in the event of other persons claiming the same property. Therefore, reading Sections 428 and 429(1)(aa) and Section 450 together, the Commissioner must be held to have adequate power to cancel the building permission granted, if it is brought to the notice that a person obtained such person by producing inadequate documents or documents which do not clinchingly show the title on the person.

In **V.Jaya Prakash v. The Commissioner of Municipality, Kapra Municipality** (un reported judgment of this Court in Writ Petition No.3979 of 2003, dt.24.11.2003), with reference to A.P. Municipalities Act, 1965, especially the provisions of Sections 209 to 215 of the said Act, I have considered this aspect of the matter and laid down that it is always permissible for the Commissioner of Municipality to reject the building permission or to keep application for building permission abeyance when there is a title dispute. The relevant passage from the judgment reads as under:

The intention of the legislation was that the Commissioner can refuse permission if there is a doubt about the title deed or any objection is raised. It is for this reason that sub-clause (4) of Section215 was amended introducing the words to the effect that an applicant should enclose a copy of the title deed duly attested by a Gazetted Officer of the Government along with an urban land ceiling clearance certificate. 'Title deed' referred to in clause (2) of Section215, in my opinion, is the title deed in respect of property free from any encumbrance. A rival claim for the same property is an encumbrance and if there is any objection raised by anybody, the Commissioner has to consider it and exercise his discretion. Similarly, in an approved layout if somebody wants to construct a building in an area earmarked for a public or community purpose or earmarked for park, anybody can object and also challenge before appropriate forum. This interpretation is in tune with the object with which the A.P. Municipalities Act was enacted.

The Municipalities Act is an Act *inter alia* providing for disciplined and planned growth of the municipal area. The power vested in various authorities should be exercised for public good. By exercising power in a manner which would result in dispute, cannot be appreciated. The common law principle of absolute individual right is replaced by the principle of community welfare. Therefore, while passing orders under Section 213 read with Section215, it is always open to the Commissioner to postpone the decision if there is a dispute between two rival claimants to the property in question. Indeed, when the dispute is *sub judice*, it shall be the duty of the Commissioner to postpone the permission, for the public authority must respect the Court's decision and implement it and/or aid in implementing the same. In this context, a reference may be made to Article 144 of the Constitution of India which is to the effect that all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court.

Even according to the petitioner, she already filed a suit against respondents 2 to 6 as well as first respondent, and therefore if the Commissioner cancels the permission on a complaint made by respondents 2 to 6 as directed by this Court, it cannot be said that the same suffers from any illegality.

A reading of the impugned order would show that the same is not passed under Section 636 of the HMC Act. In any view of the matter, petitioner was given notice prior to impugned order and on that ground, no infirmity can be inferred. The submission that the impugned order is contrary to the judgment of this Court in W.P.No.12978 of 2004 is misconceived. This Court while directing the Corporation to consider the representation of the respondents 2 and others, gave liberty to them to approach the Civil Court if they are aggrieved by any construction made by petitioner herein. When the impugned order itself is passed in favour of respondents 2 to 6, there is no necessity for them to go to Civil Court. If the petitioner has to establish her title, it is she who has to go to the Civil Court. Further, the impugned order does not in any manner decide the title and it only records that the petitioner

has not produced relevant documents. It is still open to the petitioner to produce all the documents and obtain appropriate orders from first respondent.

The Writ Petition, for the above reasons, fails and is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

20.8.2004

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To

1 The Commissioner, Warangal Municipal Corporation, Warangal.
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